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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

#168

Yokohama, Japan
4 October 1948

UNITED STATES OF AMERICA VS MATSUZO MIUMI

Review of the Staff Judge Advocate

1. The attached record of trial of Matsuzo Miumi at Yokohama, Japan from 28 May 1947 to 2 June 1947, by a Military Commission appointed by paragraph 3, Special Orders Number 123, Headquarters Eighth Army, APO 343, dated 27 May 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Matsuzo Miumi
AGE: 30 years
RESIDENCE: Not shown
MARITAL STATUS: Married
RELATIVES: Wife, one child, 4 years
EDUCATION: Not shown
VOCATION: Fisherman
MILITARY CAREER: Japanese Army

DATE OF CONFINEMENT: 9 Feb 1946
DATE OF ARRAIGNMENT: 28 May 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 28 May 1947---2 June 1947
DATE OF SENTENCE: 2 June 1947
SENTENCE: C/HL for six (6) years
CLEMENCY RECOMMENDED BY COMMISSION: No

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charges and Specifications:	Pleas	Findings	Legally Sustained
Charge: Accused at the time and place set forth in the specifications, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: On or about 15 February 1943, accused did willfully and unlawfully mistreat and abuse John Richard Burridge, a British Prisoner of War, by striking him in the face with fists.	NG	G	Yes
Sp 2: On or about 13 August 1943, the accused did willfully and unlawfully mistreat and abuse W. S. Roper, a British Prisoner of War, by beating him and forcing him to work when he was ill and physically unfit to perform such work.	NG	G except the words "and by forcing him to work when he was ill and physically unfit to perform such work".	Yes
Sp 3: Between 1 February 1943 and 1 October 1943, the accused did willfully and unlawfully mistreat numerous Allied Prisoners of War by beating and otherwise abusing them.	NG	NG	
Sp 4: On or about 2 October 1944, the accused did willfully and unlawfully mistreat and abuse Richard Yerkess and Thomas Morton, British Prisoners of War, by beating them, by forcing them to kneel for a long period of time supporting coal buckets at arms length and by suspending them from the ceiling by wires tied to their fingers.	NG	NG	

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Sp 5: During December 1943 and January 1944, the accused did willfully and unlawfully misappropriate Red Cross supplies intended for the use and benefit of Allied Prisoners of War.	NG	NG	
Sp 6: Between 1 October 1943 and 15 March 1944, the accused did willfully and unlawfully mistreat numerous Allied Prisoners of War by beating them, by forcing them to stand at attention for long periods of time exposed to the cold, forcing them to work when they were ill and by otherwise abusing them.	NG	G	except the words "by forcing them to stand at attention for long periods of time exposed to the cold; forcing them to work when they were ill; and by otherwise abusing them".
Additional Sp: On or about 15 August 1945, the accused did willfully and unlawfully mistreat Howard A. Schermerhorn, an American Prisoner of War, and five or six unidentified British Prisoners of war by beating and otherwise abusing them.	NG	G	Yes

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3. Summary of the Evidence:

a. For the Prosecution:

Identity of the Accused:

Howard A. Schermerhorn, age 37, formerly a member of the U. S. Army and a prisoner of war of the Japanese Government at Hokodate, and Akahira, each on the island of Hokkaido, Japan, between March 1945 and until the termination of the war was sworn and testified at the trial. He identified and pointed to the accused as "Miumi, otherwise known as Chunky, Naomi, or One-Arm". (R 13, 14, 17). Another former prisoner of war, affiant Wilson - North, who was confined at the Hakodate Camp and the Kamiso Camp between 15 May 1943 and the end of the war, stated that "Naomi was aged about 30 years and had lost his right arm." (Ex 6). Affiant Paul William Garrod, formerly a member of the British forces and one of the prisoners of war held by the Japanese at "Hakodate Camp in December 1943 -- until October 1944", identified as among "the Japanese staff in the camp -- Miumi, nicknamed 'Chunki!' He had only one arm. He had lost his left arm --" (Exh. 1).

As to Specification 1:

On 15 February, 1943 the accused struck John Richard Burridge, a British Prisoner of War, in the face with his fist.

Affiant Garrod related that "at 7:30 one evening, the roll-call was about to be taken and Miumi entered the hut for this purpose. He went up to Flight Sergeant Burridge and struck him in the face with his fists. Flight Sergeant Burridge retaliated with his fists and at that moment Iona entered the hut and Burridge was placed under arrest. As a result, he was sentenced to five (5) years penal servitude by a Japanese court-martial at Sapporo" (Ex 1). Affiant Herbert Edward Turney, formerly a member of the British "Merchant Navy" -- "as a cadet officer", and a prisoner of war, related in his affidavit that while he was confined in the Japanese Military Prison at Sapporo, Hokkaido, "There was a prisoner, a Flight Sergeant Burridge, at Hakodate, who was taken away from the Japanese Camp for striking a Japanese guard who had previously hit him first" (Ex 2). The statement of "J. Burridge, F./Sgt" dated "18 February 1943 at Hakodate Kempei Detachment" included in the record of proceedings of the Japanese court-martial of "Flight Sergeant John Richard Burridge, Royal Air Force" discloses that on 15 February 1943 he was the "2nd interior section leader" at the Hokodate Prisoner of War Internment Camp, and in such capacity "ordered the men in each room to be ready for roll-call--. When I came to room 22 that day at 1950 hours, a guard was there already. He said something to me in Japanese which I do not understand but I surmised by his gesture that he wanted the shoes which were thrown about in front of the room to be arranged properly. I immediately proceeded to do so by pushing the shoes with my feet into the proper alignment.

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The guard, thereupon, suddenly shouted and pushed me. As I was being pushed while kicking the shoes, I almost lost my balance, and as I was regaining my footing he struck my right cheek with his left hand. In a fit of fury I struck his left cheek with my right hand. He struck me again, so I struck back at him; but in the meantime the officer of the day came and stopped us" (Ex 9). In his statement to the Kempei Detachment in connection with the above court-martial proceedings at Hakodate on 18 February 1943, the accused related that he was employed as a "Yatoinin (Tn. Disabled Veteran Pvt.)" on 2 February 1943 as a messenger and guard of the Hakodate Prisoner of War Internment Camp (Ex 9).

As to Specification 2:

On 13 August 1943, the accused beat W. E. Roper, a British Prisoner of War.

Affiant Walter Simpson Roper related that while a British Prisoner of War of the Japanese Government at "Hakodate Camp", -- "among the guards was a man named Nemi -- we nicknamed him 'Chunky'. He was a disabled soldier, having lost his right arm --". On 13 August 1943, while Roper was working in the cold storage warehouse near the camp, a Japanese woman "surreptitiously passed me a cigarette, which I placed in the breast pocket of my tunic, which was hanging on the wall nearby. Just as the break started, I walked to the stairs when Nemi, who was coming up, struck me in the mouth with his clenched fist and knocked me back into the room". When Roper asked for a reason "he replied 'Tobacco'" and Roper replied "No". "He immediately struck me again in the mouth with his clenched fist. He struck me not once, but many times, and drove me up and down the room, striking me in the face and mouth the whole of the time. Altogether, I went up and down the room eighteen times. Finally, I collapsed and then gave way and fetched the cigarette out of my pocket and gave him it. By this time, I was in a shocking state, my face being bruised and swollen all over, my lips cut inside, and later on one eye partly closed and blackened. I was spitting blood for the whole of the rest of the day.--I was given no treatment at all for my injuries." (Ex 3)

As to Specifications 3, 4, and 5: Not guilty (R 54).

As to Specification 6:

Between 1 October 1943 and 15 March 1944, the accused beat numerous Allied prisoners of war.

Roper related in his affidevit that "This man (referring to "Nemi", nicknamed "Chunky") took a delight right from the start in beating us all, -- I have very often seen him strike men for no reason whatever." (Ex 3). Affiant Wilson-North, a former British prisoner, stated that "Naimi did most of the beating. On many occasions I have seen him beating men about the face and head with his fist for no reason whatever. I made notes about all these incidents with the names of the men beaten and handed them to an American officer on arrival in Manila about the 25th September 1945." (Ex 6).

Affiant Michael J. Daly, formerly a private in the United States Army and a prisoner of war of the Japanese government at Hakodate Main Camp from April 1943 until transferred "to a camp called Bebie, Hokkaido -- in May or June 1945" where he remained until released in September 1945, related that he "saw Miumi, a guard who had but one good arm, beat the English prisoners of war on several occasions but can remember no specific individuals or incidents. Miumi seemed to lose his head entirely when he started slapping a prisoner of war and would swing with all his might both with his good arm and with the short one." (Ex 8).

As to the Additional Specification:

On 15 August 1945, at the coal mine near Akahira, Hokkaido, the accused beat and otherwise abused Howard A. Schermerhorn, an American Prisoner of war, and five or six unidentified British Prisoners of War.

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Witness Schermerhorn testified that "The day that we guessed the war had terminated was the first day I was taken out for work at the mines. At the mine proper we were taken out by this man Miumi and put to work on top of the mine. Several British prisoners and myself --- We were working along --- and Miumi had come forward and I guess we were not carrying enough logs or something. He had struck three or four of us several times, three or four in the immediate vicinity, to pursuade us to carry more logs or to carry them faster," striking the prisoners with a stick about an inch in diameter--"it was a backhand blow and it caught some of us across the logs and across the spine in the middle of the back". At that time the accused "seemed to be in charge of work details. The majority of the time he was in camp" (R 14). The beating continued "about three minutes" and "by the time we got back into camp the immediate soreness had gone away" (R 16).

b. For the Defense:

After all of his rights as a witness were fully explained to him, the accused elected to be sworn as a witness and testified that he served as a civilian guard in Japanese prisoner of war camps from 1 February 1943 until the war terminated and the prisoners were liberated. He began guarding prisoners at the Hakodate Main Prisoner of War Camp on 1 February 1943 and remained there until 2 October 1943 when he was transferred to the Kamiiso branch camp. After "a full one year and eight months" at Kamiiso he went to the Akabira camp on 5 June (1945) where he served "until all the prisoners of war returned home". The accused lost his right arm below the elbow while serving as a soldier in the Imperial Japanese Army "at North China" (R 41).

As to Specification 1: On 15 February 1943 while serving as "orderly of the day" he accompanied officer of the day Aono "to take the evening roll-call" and during his ensuing inspection observed "one pair of shoes was scattered and so I called Burridge and told him to arrenge it. ---When I told Burridge to arrange the shoes, he kicked it with his foot, so I told him that in arranging the shoes he should use his hands. But in spite of this Burridge kicked the shoes again. So I attempted to arrange the shoes and when I laid my hand on the shoe he hit my arm, in order to sweep it away. Because Burridge hit my arm, my hand swung and hit his right cheek. Thereupon Burridge made his right hand into a clenched fist and hit toward my left cheek. And so I again hit Burridge's right cheek. Burridge again clenched his right fist and hit my left cheek.---The inside of my mouth was cut and so I spit blood within the barracks." (R 41, 42). On cross examination relating to that portion of his statement given to the Hakodate Kempei detachment on 16 February 1943 concerning this incident stating "I told him to use his hands instead of his feet, but he kept on using his feet. Realizing that he did not understand the Japanese language, I indicated by gestures. Suddenly he pushed me forcibly. Losing my temper I struck his right cheek with my left hand", the accused testified "That is not correct" and "I did not use gestures, but spoke to him in the Japanese language. I did not hit him, because I lost my temper, but he shoved my hand aside and in that process my hand struck him." Further, that he hit Burridge two times with his left hand. (R 45, 46, 47).

As to Specification 2: The accused testified that he recalled an incident on 13 August 1943 involving a prisoner of war by the name of Roper which occurred at a cold storage plant in Hakodate when he went to inspect the working site. "At that time I saw him (Roper) receiving cigarettes from a woman working in his vicinity. I thought that if I silently stood by without doing anything such a thing would be repeated and a big incident might one day occur; and so as a lesson to him I hit him two times" with "my open hand. I left immediately and went to inspect the other working sites" (R42).

As to Specification 6: On direct examination he denied ever beating prisoners of war generally and on cross examination admitted hitting Burridge and Roper. When examined by the commission he testified that he "did not recall" striking other prisoners beside Burridge and Roper and then on redirect examination said that "I mean that I don't remember striking any other prisoners of war" (R 43, 48, 50, 51).

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As to the Additional Specification: The accused testified on direct examination that "Around 2 P.M. of the 15th I went to the working site where about fifteen persons were working." He did not have a stick with him at this time, did not strike anybody on that day, and while he had seen Mr. Schermerhorn prior to the day he testified in this case, had never struck him (R 43). On cross examination, he testified that the fifteen men were hauling lumber and cannot recall whether Mr. Schermerhorn was one of these men (R.45).

In addition to the testimony of the accused, he produced three additional Japanese witnesses each of whom testified in his defense. Shigeru Aono, to whom the accused referred as the officer of the day with respect to the Burridge incident in Specification 1, generally confirmed the background of the incident as related by the accused but testified that "the only thing I actually saw was that moment when the prisoner of war hit Miumi". He "did not know anything definite, and thought that Burridge struck Miumi about two times or it may have been more, but I do not remember clearly." On cross examination the witness said he did not see Miumi strike Burridge (R 38, 40).

The two remaining witnesses, one a former commanding officer of the accused at the Kamiiso No. 1 Dispatch camp and the Akabira No. 2 Branch camp, and the other a former civilian guard at the Hakodate No. 1 Dispatch camp and the No. 2 Branch camp during the accused's tenur as a guard, testified they had never seen the accused mistreat prisoners, had no recollections of any complaints from prisoners that they were being beaten and did not recall that the accused had anything to do with beating prisoners Yorkess and Morton (R 22, 24, 25, 28, 36).

4. Opinion:

In obedience to the mandate of the Potsdam Declaration that stern justice shall be meted out to all war criminals including those who have visited cruelties upon prisoners, and pursuant to the directions of the Supreme Commander for the Allied Powers, the accused was charged and found guilty by a military commission of violating the laws of war in that, while serving as a civilian guard for and on behalf of the Imperial Japanese Army in custody and control of Allied prisoners of war, he struck and beat with his hands and a stick three identified and numerous other unidentified prisoners. The evidence of the three identified victims, supported by carefully prepared and detailed sworn statements of other former prisoners clearly and convincingly established a prima facie showing of the accused's guilt. The accused in his defense does not deny the time and place of the three specific incidents established by the prosecution (Sp 1-Burridge; 2-Roper; and the additional Specification - Schermerhorn) or that the Burridge and Roper incidents occurred. As to Burridge, the accused sought to establish that the victim was the aggressor but as to Roper, the accused contended that "so as a lesson to him I hit him two times" with "my open hand". In each of these two cases, he admits striking the victims. Otherwise, the accused, in defense, generally denied beating prisoners other than Burridge and Roper, and specifically denied the occurrence of any such beating as victim Schermerhorn attributed to him.

The military commission which heard the evidence and observed the witnesses has resolved the disputed issues of fact presented in this case against the accused and no sufficient reason is apparent why any other result than that expressed in the findings would be reached by any other body of fair and unbiased individuals concerned only with arriving at the truth. No matter what may be the occasion, no right exists among civilized nations to sanction physical abuse by its agents of helpless prisoners of war. By the civil criminal laws of every civilized nation the conduct of the accused would be characterized as assault and battery meriting fine and imprisonment.

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In this case, the commission had jurisdiction of the offense and over the person of the accused. He was afforded a fair trial, competent counsel who adequately and vigorously represented him at every stage of the proceedings, full cross examination of all adverse witnesses, witnesses and exhibits in his own behalf, and the right of testifying fully and at length regarding his version of the various incidents. At the conclusion of all evidence and the arguments the commission found the accused not guilty of three alleged violations (Specifications 3, 4, 5). There is no other indication but that the accused was sane at both the time he committed the offenses of which he was found guilty and at the time of his trial. No complaint is urged by anyone in this connection. No errors injuriously effecting the rights accorded to the accused were committed, and the trial was conducted in compliance with applicable regulations governing the trials of accused war criminals. The record of trial supports the findings of guilty.

5. Recommendation:

No request or petitions for clemency have been submitted in this case. The evidence discloses the accused's guilt of three specific instances of beating prisoners and the beating of other unidentified prisoners of war on undisclosed dates. For these offenses, each a violation of the laws of war and mistreatment of prisoners of war in contravention of the Geneva Convention with respect of human treatment and protection against acts of violence, the sentence to confinement at hard labor for six years imposed by the trial commission is not considered excessive. In fact, when compared with the sentence of five years imprisonment imposed by the Japanese Army Court Martial upon victim Burridge for his part in the incident disclosed by the testimony under Specification 1, it is patent that the commission displayed leniency toward the accused. The sentence of the trial commission is authorized upon conviction of a charge of violating the laws of war and it is recommended that it be approved and ordered executed. Owing to the length of time the accused has been in confinement prior to the date of sentence, it is further recommended that thirteen (13) months of the sentence imposed be remitted. Sugamo Prison, Tokyo, Honshu, Japan, is the appropriate place of confinement.

6. Action:

A form of action designed to carry these recommendations into effect is attached.

ROBERT O. HILLIS
Major, JAGD
Asst. Staff Judge Advocate

I concur in general.

ALLAN R BROWNE
Lt Col JAGD
Army Judge Advocate

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